

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
ACTAVA TV, INC., et al, : Docket #1:18-cv-06626-  
Plaintiffs, : ALC-KNF  
- against - :  
JOINT STOCK COMPANY "CHANNEL ONE : New York, New York  
RUSSIA WORLDWIDE," et al, : January 13, 2021  
Defendants. : TELEPHONE CONFERENCE  
----- :  
-----

PROCEEDINGS BEFORE  
THE HONORABLE JUDGE KEVIN N. FOX,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: Moses & Singer LLP  
By: Michael M. Rosenberg, Esq.  
405 Lexington Avenue - 12th Floor  
New York, NY 10174-1299  
585-613-8682

For Defendants: Dunnington Bartholow & Miller, LLP  
By: Hardin P. Rowley, Esq.  
250 Park Ave.  
New York, NY 10177  
212-682-8811

Dunnington, Bartholow & Miller, LLP  
By: Raymond J. Dowd, Esq.  
1359 Broadway  
New York, NY 10018  
212-682-8811

Transcription Service: Carole Ludwig, *Transcription Services*  
155 East Fourth Street #3C  
New York, New York 10009  
Phone: (212) 420-0771  
Email: [Transcription420@aol.com](mailto:Transcription420@aol.com)

APPEARANCES - CONTINUED:

For Defendants, TV  
Darial, Rain TV-Channel,  
CTC Network, New  
Channel:

Gabriel & Pelaez, PLLC  
By: Michael George Gabriel, Esq.  
72-11 Austin Street, PMB 406  
Forest Hills, NY 11375  
917-515-3970

Proceedings conducted telephonically and recorded by  
electronic sound recording;  
Transcript produced by transcription service

INDEX

E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
----------------	---------------	--------------	------------------	-----------------

None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
-----------------------	--------------------	-----------	-----------	------------------

None

1

PROCEEDINGS

4

2

HONORABLE KEVIN N. FOX (THE COURT): This is

3

Actava TV versus Joint Stock Company "Channel One Russia  
4 Worldwide," et al; No. 18-cv-6626.

5

Will counsel note your appearance, beginning with  
6 counsel to the plaintiffs?

7

MR. MICHAEL M. ROSENBERG: This is Michael  
8 Rosenberg from Moses & Singer LLP on behalf of the  
9 plaintiffs.

10

THE COURT: Will defendants' counsel please state  
11 your appearance?

12

MR. DOWD: Good morning, your Honor; Raymond Dowd  
13 of Dunnington, Bartholow & Miller, for Joint Stock Company,  
14 Channel One Russia Worldwide and Limited Liability Company,  
15 Comedy TV. And with me today is --

16

MR. HARDIN ROWLEY: Hardin Rowley from Dunnington,  
17 Bartholow & Miller.

18

THE COURT: This is Judge Fox. Did someone else  
19 just join the conference?

20

MR. MICHAEL GABRIEL: Yes. This is Attorney  
21 Michael Gabriel for some of the defendants.

22

THE COURT: Which defendants are you representing,  
23 Mr. Gabriel?

24

MR. GABRIEL: Defendant Darial, defendant Rain TV,  
25 defendant CTC, defendant New Channel. I think that's it.

1

PROCEEDINGS

5

2 Yes.

3 THE COURT: I believe we now have appearances by  
4 everyone, if I'm correct. Make that known to me now.5 How are things progressing? Are the parties on  
6 track to complete the work of pretrial activities by the  
7 March deadline? This is Judge Fox.8 MR. ROSENBERG: Your Honor, this is Michael  
9 Rosenberg. We are somewhat on track. We're waiting to  
10 confirm deposition deadlines for depositions taken of our  
11 witnesses, that is, those of the plaintiffs'  
12 representatives. However, we're at somewhat of an impasse  
13 because we've received dates from defendants' counsel for  
14 Kartina and CTC that are very late in February that are  
15 very close to the March 4th final deadline that your Honor  
16 ordered recently. If those depositions are taken very close  
17 to March 4th, then the concern's that expert reports would  
18 be exchanged only after that, leaving little to no time to  
19 actually build in time for the rebuttal reports and take  
20 the expert depositions before March 4th.21 So our proposal to defendants was to produce all  
22 witnesses for depositions by February 5th so that we could  
23 actually build in time for the exchange of expert reports  
24 and then afterwards take those depositions; that we could  
25 hope to complete all discovery, as your Honor ordered, by

1

PROCEEDINGS

6

2 March 4th. But it appears that recently defendants have  
3 objected to that, proposing that expert reports be  
4 exchanged before all witness depositions are taken, which  
5 plaintiffs object to.

6 THE COURT: This is Judge Fox. Does counsel for  
7 any defendant want to be heard?

8 MR. GABRIEL: Your Honor, this is Attorney Michael  
9 Gabriel. We understood the Court's Order extending the  
10 discovery deadline to allow the parties leeway to schedule  
11 depositions in the short remaining time and taking into  
12 account our firm's recent appearance and providing time for  
13 counsel to get up to speed to be adequately prepared for  
14 these depositions. We're willing to work with plaintiff on  
15 scheduling dates that work, but still cramming all the  
16 depositions in a short period of time still seems counter  
17 to the intent of our asking for the request and as we  
18 understand it, in line with your Honor's extension. And  
19 we're just trying to work within the parameters of the  
20 limited time we have and cannot or hope not to be held to a  
21 February 5th limited two-week extension to fact discovery  
22 and work within the March 5th time frame that the Court  
23 provided.

24 THE COURT: Does counsel for any other defendant  
25 wish to be heard?

1

PROCEEDINGS

7

2 MR. ROWLEY: Yes, your Honor. This is Hardin  
3 Rowley from Dunnington.

4 Our main issue is we deposed for two hours  
5 Mr. Tsoutiev, one of the plaintiffs, and another fact  
6 witness from plaintiffs. And during both those depositions  
7 it became clear that plaintiffs have not produced all  
8 documents. And our concern about the deadlines is that we  
9 need the time to review the documents after they're  
10 produced, hopefully by plaintiffs, so we can properly  
11 depose Mr. Tsoutiev for the additional five hours. And we  
12 may need to re-call the other deponent, Mr. Mackotin, who's  
13 plaintiff's designated technical expert witness. He only  
14 prepared, I think he said for one hour. He didn't know the  
15 name of his counsel, and he didn't bring any documents, as  
16 required by his subpoena. So we think plaintiffs need more  
17 time to get in compliance with that before we continue  
18 further depositions of the three remaining witnesses.

19 THE COURT: Does counsel for plaintiff want to be  
20 heard further?

21 MR. ROSENBERG: Yes, your Honor. We received a  
22 request --

23 THE COURT: Please identify yourself. This is  
24 needed so the transcriber will know who is speaking.

25 MR. ROSENBERG: I apologize. This is Michael

1

PROCEEDINGS

8

2 Rosenberg for plaintiffs.

3                   We received a request last Wednesday, so that is  
4 January 6, 2021, for certain documents that defendants were  
5 requesting that are very specific documents, some of which  
6 do not even pertain to the claims or defenses in this  
7 action. We have objected to producing documents which are  
8 irrelevant to this action; however, we have indicated that  
9 today we will produce additional documents that defendants  
10 have requested. However, we have satisfied our discovery  
11 obligations otherwise, and we do not believe that requests  
12 for very specific documents should postpone the deposition  
13 schedule we have already set in place.

14                   As for Mr. Mackotin, he did not recall the name of  
15 one attorney, but he did -- has produced all documents that  
16 we had obligations to produce, and we have indicated that  
17 we will not re-produce Mr. Mackotin for deposition.

18                   THE COURT: This is Judge Fox. When I craft  
19 Scheduling Orders, I give the parties maximum flexibility  
20 to complete your work in a sequence that you think is  
21 appropriate and in a way that would enable you, because  
22 you're living with the case day in/day out. I am not, and I  
23 do not know, of course, what constrictions there are on  
24 your time. I imagine that this is not the only case where  
25 counsel is representing clients, and there may be other

1

PROCEEDINGS

9

2 demands on your time. So that is why I fix a deadline date.  
3 I do not pinpoint a date by which certain activities must  
4 be completed; I leave that to you. You're all trained  
5 professionals; and, again, you have certain obligations  
6 about which I'm ignorant which will inform how you use your  
7 time.

8           If it is the case that you're unable or unwilling  
9 to work together to find dates for depositions, I can very  
10 easily open the calendar and take the list of names of  
11 persons who need to be deposed and select dates for you.  
12 They may not be dates that are convenient to your schedules  
13 or your clients' schedules, but those will be the dates.  
14 And either the depositions will go forward or documents  
15 will be exchanged, whatever you need to do, on the dates I  
16 pick, and everything will be done by March. I don't want to  
17 do that. Again, that's why I structured a Scheduling Order  
18 placing a deadline, leaving you trained professionals,  
19 knowledgeable about your own obligations, maximum  
20 flexibility to do whatever you need to do as long as it's  
21 done on the deadline.

22           So if you want me to select dates for depositions  
23 for you, tell me that; and as I said, I can do it very  
24 quickly. I prefer, however, that you work collaboratively  
25 to do whatever work you believe needs to be done to

1 PROCEEDINGS 10

2 represent your respective clients adequately by the  
3 deadline date. You tell me how you want to proceed.

4 MR. ROSENBERG: Your Honor, this is Michael  
5 Rosenberg for the plaintiffs. I have one question regarding  
6 your last Order. Did you intend for expert discovery to be  
7 completed by March 4th, as well as fact discovery? Because  
8 that is our concern is that defendants have offered their  
9 witnesses at such a late time that we do not believe expert  
10 discovery, expert reports could be exchanged after that  
11 with reasonable time to comply with that March 4th  
12 deadline.

13 THE COURT: The Order is clear and unambiguous in  
14 that it says, "All discovery of whatever nature shall be  
15 initiated so as to be completed on or before March 5,  
16 2021." "All discovery of whatever nature." So whatever you  
17 have to do, I've given you maximum flexibility from  
18 December, when the Order was issued, to March to decide how  
19 you want to spend your time, whatever activities you need  
20 to do. I left it all up to you. Again, you're trained  
21 professionals; you know better than I what your obligations  
22 are to the instant client and other clients and on your  
23 time. So that is the answer.

24 MR. ROSENBERG: Understood, your Honor.

25 THE COURT: So is it the case that the parties

1

PROCEEDINGS

11

2 want me to pick arbitrary dates for depositions for however  
3 many people you want to depose, or do you want to work  
4 collaboratively to find times that work best for you and  
5 your clients so that you complete your work in March?

6

7 MR. DOWD: Your Honor, this is Raymond Dowd for  
8 two of the defendants. I would suggest that counsel be  
9 given an additional opportunity to work together; and if we  
10 can't find agreement along the lines that your Honor  
11 suggested, that we apply to the Court for assistance.  
12 Perhaps if we could have until close of business on Friday  
13 to work things out, I think that might be in line with  
everyone's best interests.

14

15 THE COURT: This is Judge Fox. I have no  
16 opposition to that. I believe you should work  
17 collaboratively, not only on this issue but on all issues  
18 that affect having the case prepared so that you can  
19 proceed to trial, if trial is needed. So I welcome your  
20 suggestion that you and your colleagues confer and move  
21 forward. Again, if you cannot, just send me the list of  
names, and I will pick dates for depositions for you.

22

23 Is there anything else that hasn't been touched  
upon that any party wants to raise with me this morning  
24 before I release you?

25

UNIDENTIFIED: Your Honor, there may be some

1 PROCEEDINGS 12

2 disputes over documents being produced, etc. I would  
3 imagine any such disputes we raise in compliance with your  
4 Honor's individual rules?

5 THE COURT: That's correct. And there again, I  
6 urge you, before resorting to writing to me with disputes,  
7 to try to resolve them through civil conversation  
8 independent of me. But, of course, if that fails and you  
9 must write to me, I will receive your writing and address  
10 it as quickly as possible. But I again believe that the  
11 best course is for you to work collaboratively to resolve  
12 things and keep moving forward, because March will be here  
13 sooner than you know.

14 This is Judge Fox, anything else from any party  
15 before I release you?

16 MR. ROSENBERG: No, your Honor.

17 MR. DOWD: No --

18 THE COURT: Hearing nothing, I will conclude the  
19 conference at this time. Thank you all very much. Good day.

20 (Whereupon, the matter is recessed.)

21

22

23

24

25

1

13

2

3 C E R T I F I C A T E

4

5 I, Carole Ludwig, certify that the foregoing  
6 transcript of proceedings in the case of Actava TV, Inc.,  
7 et al v. Joint Stock Company "Channel One Russia  
8 Worldwide," et al, Docket #18-cv-06626, was prepared using  
9 digital transcription software and is a true and accurate  
10 record of the proceedings.

11

12

13

14

15

Signature Carole Ludwig

16

Carole Ludwig

17

18

19

Date: January 15, 2021

20

21

22

23

24

25